

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**IMPLICIT, LLC,**

*Plaintiff,*

**v.**

**NETSCOUT SYTEMS, INC.,**

*Defendant.*

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**Civil Action No. 2:18-cv-53-JRG  
LEAD CASE**

**JURY TRIAL DEMANDED**

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**SEVENTH AMENDED DOCKET CONTROL ORDER**

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In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

<b>Current Deadline</b>	<b>Amended Deadline</b>	<b>Event</b>
September 9, 2019	December 9, 2019	*Jury Selection – 9:00 a.m. in <b>Marshall, Texas</b> Before Judge Rodney Gilstrap
August 15, 2019	November 13, 2019	*Pretrial Conference – 9:00 a.m. <b>Marshall, Texas</b> before Judge Rodney Gilstrap
August 7, 2019	November 13, 2019	*Notify Deputy Clerk in Charge regarding the date and time by which juror questionnaires shall be presented to accompany jury summons if the Parties desire to avail themselves the benefit of using juror questionnaires <sup>1</sup>

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<sup>1</sup> The Parties are referred to the Court's Standing Order Regarding Use of Juror Questionnaires in Advance of *Voir Dire*.

Current Deadline	Amended Deadline	Event
August 7, 2019	November 6, 2019	<p>*Notify Court of Agreements Reached During Meet and Confer</p> <p>The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i>. The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.</p>
August 5, 2019	October 30, 2019	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations
July 29, 2019	October 30, 2019	<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes at:  <a href="mailto:shelly_holmes@txed.uscourts.gov">shelly_holmes@txed.uscourts.gov</a></p>
July 29, 2019	October 25, 2019	<p>File Motions <i>in Limine</i></p> <p>The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>
July 29, 2019	October 25, 2019	Serve Objections to Rebuttal Pretrial Disclosures
July 22, 2019	October 18, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
July 12, 2019	October 8, 2019	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof

Current Deadline	Amended Deadline	Event
	October 8, 2019	*Responses to Dispositive Motions, Motions to Strike Expert Testimony and Daubert Motions. Responses to dispositive motions that were filed <u>prior</u> to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e), not to exceed the deadline as set forth in this Docket Control Order. <sup>2</sup> Motions for Summary Judgment shall comply with Local Rule CV-56.
July 3, 2019	September 24, 2019	*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)  No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.
July 3, 2019	September 24, 2019	*File Dispositive Motions  No dispositive motion may be filed after this date without leave of the Court.  <u>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u>
June 25, 2019	September 18, 2019	Deadline to Complete Expert Discovery
June 11, 2019	September 6, 2019	Serve Disclosures for Rebuttal Expert Witnesses
May 28, 2019	August 6, 2019	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof Deadline to Reduce Prior Art References and Obviousness Combinations.
May 23, 2019	July 30, 2019	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
New Deadline	July 23, 2019	Deadline to Reduce Asserted Claims

<sup>2</sup>The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.” If the deadline under Local Rule CV 7(e) exceeds the deadline for Response to Dispositive Motions, the deadline for Response to Dispositive Motions controls.

Current Deadline	Amended Deadline	Event
New Deadline	June 17, 2019	Defendants to serve amended disclosures pursuant to P.R. 3-3 and 3-4.
New Deadline	May 24, 2019	Plaintiff to serve amended disclosures pursuant to P.R. 3-1 and 3-2.

(\*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

### ADDITIONAL REQUIREMENTS

**Notice of Mediator:** The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

**Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions:** For each motion, the moving party shall provide the Court with two (2) hard copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. These copies shall be delivered to the Court within three (3) business days after briefing is completed. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall submitted on a single flash drive to the Court. These copies shall be delivered no later than the dispositive motion deadline.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

**Motions for Continuance:** The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**Amendments to the Docket Control Order (“DCO”):** Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a

date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

**Proposed DCO:** The Parties' Proposed DCO should also follow the format described above under "Amendments to the Docket Control Order ('DCO')."

**So ORDERED and SIGNED this 22nd day of May, 2019.**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE